IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

WP(C).No. 31792 of 2006(I)

AGAINST THE ORDER IN EA.749/06 IN EP.NO.177/2003 IN OS.112/2000 of ADDL. SUB COURT,NORTH PARAVUR

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PETITIONER:

ANGAMALY CHITTY FUND PVT. LTD.,
ANGAMALY, REP. BY T.K.JOSEPH.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS:

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1. C.S.DEVASSY, CHIRAKKAL VEEDU,
DEVAGIRI KARA, THURAVOOR VILLAGE.

2. ROSY DEVASSY, CHIRAKKAL VEEDU,
DEVAGIRI KARA, THURAVOOR VILLAGE.

BY ADV. SRI.ROY MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF EP 177/03 IN OS 112/2000, PARAVUR SUB COURT

EXT.P2: COPY OF EA 749/06 IN EP 177/03 IN OS 112/2000, SUB COURT, NORTH PARAVUR

EXT.P3: COPY OF EA 750/06 IN EP 177/03 IN OS 112/00, SUB COURT, NORTH PARAVUR

EXT.P4: COPY OF ORDER DATED 8/11/2006 IN EA 749/06 IN EP 177/03 IN OS 112/00 SUB COURT, NORTH PARAVUR

EXT.P5: COPY OF ORDER DATED 8/11/2006 IN EA 750/06 IN EP 177/03 IN OS 112/00 SUB COURT, NORTH PARVUR

//True copy//

SHW TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO.31792 OF 2006

Dated 17th January 2007

J U D G M E N T

Petitioner is decree holder and respondents judgment debtor in O.S.112/2000 on the file of Sub court, North Paravur. For realisation of decree debt, petitioner filed E.P.177/03. Properties of the respondents were sold in court auction and was purchased by auction purchaser decree holder. Sale was confirmed. At that stage the matter was settled between the decree holder and judgment debtors. Decree holder filed Ext.P3 memo before the executing court stating that decree debt has been satisfied and therefore full satisfaction is to be recorded. Petitioner also filed an application for return of the excess amount deposited by petitioner towards purchase price and also the amount deposited for issuing sale certificate. Under Exts.P4 and P5 orders petitions were dismissed. This petition is filed under Article 227 of Constitution of India challenging those orders.

2. Learned counsel appearing for petitioner and

respondents were heard.

3. It is clear from the submission made by learned counsel appearing for decree holder petitioner and respondents as well as Ext.P3 petition filed before the executing court that after confirmation of sale, decree holder received the entire amount due from judgment debtors agreeing that decree holder will not proceed with the right obtained under the purchase of property. Respondents agreed that decree holder could receive the amount deposited in court. It is clear from the report called for from the executing court that though sale was confirmed, no sale certificate was issued to decree holder and the amount deposited was not used for purchasing stamps. Before a sale certificate was issued the matter was settled with decree holder and judgment debtors. In such circumstance, in the interest of justice, executing court is directed to refund the excess amount, which was deposited by decree holder towards purchase price as well as the amount deposited for purchase of stamps for issuance of sale certificate. It is made clear that in view of the settlement, in spite of the confirmation of

sale, it is declared that the court auction sale in favour of decree holder auction purchaser stands cancelled.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.